

## **EXHIBIT E**

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10  
11 KELVIN D. DANIEL, et al  
12 Plaintiffs,

13 v.

14 SWIFT TRANSPORTATION  
15 CORPORATION,  
16 Defendant.

Case No. 2:11-cv-01548-PHX-ROS

**DEFENDANT SWIFT  
TRANSPORTATION CO. OF  
ARIZONA, LLC'S FIRST AMENDED  
AND SUPPLEMENTAL RESPONSES  
TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES**

17  
18 Defendant Swift Transportation Co. of Arizona, LLC ("Swift") hereby responds to  
19 Plaintiffs' First Set of Interrogatories as follows:

20 **PRELIMINARY STATEMENT**

21 In responding to Plaintiffs' discovery requests, Swift has conducted a reasonable  
22 inquiry and investigation relating to the information requested. This inquiry and  
23 investigation is ongoing. The responses set forth herein are made on the basis of Swift's  
24 current knowledge. Swift reserves the right to refer to, conduct discovery with reference  
25 to, or offer as evidence, such information that may have, in good faith, not been included  
26 in the following responses. Swift expressly reserves the right to amend or supplement its  
27 responses, as appropriate, based on further inquiry and investigation. The information  
28 contained in these responses is also subject to correction for errors or omissions.

1 Nothing herein shall be construed as an admission or waiver of: (i) objections  
 2 regarding admissibility, competency, relevance, privilege, materiality, or authenticity; (ii)  
 3 objections due to vagueness, ambiguity, or undue burden; or (iii) Swift's right to object to  
 4 the use of these documents during any subsequent proceeding, including the trial of this or  
 5 any other action.

## 6 INTERROGATORIES

### 7 INTERROGATORY NO. 1:

8 Identify every person who has interacted with or otherwise performed work  
 9 regarding the Named Plaintiffs' job applications or consumer reports (other than in  
 10 defense of the litigation in this case), including his or her name, job title, description and  
 11 department/division, formal employer, work performed and location of employment.

### 12 ANSWER:

13 Swift objects to Interrogatory No. 1 as overly broad and unduly burdensome to the  
 14 extent that it seeks information regarding non-Swift employees that Swift has no  
 15 knowledge or information about. Interrogatory No. 1 is also overly broad and unduly  
 16 burdensome because not every person who has interacted with or otherwise performed  
 17 work regarding the Named Plaintiffs' job applications or consumer reports will be  
 18 relevant or material to Plaintiffs' claims or efforts to certify the purported class.

19 Swift further objects to Interrogatory No. 1 to the extent that the information  
 20 requested is already known by, or available to, the Named Plaintiffs, as they are in the  
 21 best position to know who interacted with them, and as evidenced in Swift's disclosure  
 22 statements and documents produced contemporaneously therewith.

23 Notwithstanding these objections and without waiving them, Swift responds that,  
 24 based on the facts presently known, the following people interacted with or otherwise  
 25 performed work regarding the Named Plaintiffs' job applications or consumer reports:

- 26 • Michelle Adamson works in Swift's security department at Swift's corporate office  
 27 in Phoenix, Arizona. Michelle noted on Plaintiff Kelvin Daniel's employment  
 28 application that Mr. Daniel would have to call Swift for an interview.

- 1 • Chad Bumgarner is a safety compliance coordinator at Swift who works at a Swift
- 2 recruitment center in Lathrop, California. Chad interacted with Plaintiff Kelvin
- 3 Daniel at a Swift orientation that Mr. Daniel attended. At that orientation, Mr.
- 4 Daniel voluntarily disclosed several convictions in response to Swift's admonition
- 5 that applicants accurately fill out and disclose information on their applications.
- 6 • Bill Cody was a recruiter at Swift who worked at a Swift recruitment center in
- 7 Columbus, Ohio. Bill may have been the recruiter for Plaintiff Tanna Hodges'
- 8 September 2009 application. Bill no longer works at Swift.
- 9 • Javier Covian is a recruit processor at Swift who works at Swift's corporate office
- 10 in Phoenix, Arizona. Javier processed Plaintiff Kelvin Daniel's employment
- 11 application.
- 12 • Douglas Driscoll is a recruiter at Swift who works at a Swift recruitment center in
- 13 Sumner, Washington. Douglas was the recruiter for Plaintiff Kelvin Daniel.
- 14 • Tammy Ferguson works in the recruiting department at Swift's corporate office in
- 15 Phoenix, Arizona. Tammy ordered consumer reports for Plaintiff Kelvin Daniel on
- 16 December 28, 2010.
- 17 • Angelica Flores works in Swift's security department at Swift's corporate office in
- 18 Phoenix, Arizona. Angelica determined that Plaintiff Kelvin Daniel was not
- 19 approved for hire.
- 20 • Mary Johnson was an administrative assistant who worked at a Swift recruitment
- 21 center in Memphis, Tennessee. Mary worked on the job application for Plaintiff
- 22 Tanna Hodges. Mary no longer works at Swift.
- 23 • Kris Keplar is a recruiter at Swift who works at a Swift recruitment center in
- 24 Columbus, Ohio. Kris was the recruiter for Plaintiff Tanna Hodges.
- 25 • Delois Lindsey was a recruit processor at Swift who worked at Swift's corporate
- 26 office in Phoenix, Arizona. Delois was the processor for Plaintiff Tanna Hodges'
- 27 employment application. Delois no longer works at Swift.
- 28 • Patricia Ramos worked in Swift's security department at Swift's corporate office in

1 Phoenix, Arizona. Patricia interviewed Plaintiff Tanna Hodges on December 14,  
2 2009. Patricia no longer works at Swift.

- 3 • Berenice Ruiz worked in Swift's security department at Swift's corporate office in  
4 Phoenix, Arizona. Berenice interviewed Plaintiff Kelvin Daniel on January 27,  
5 2011. Berenice no longer works at Swift.
- 6 • Tamara Strickland is a recruiter at Swift who works at a Swift recruitment center in  
7 Memphis, Tennessee. Tamara Strickland left a voicemail message for Plaintiff  
8 Kelvin Daniel on December 28, 2010.

9 **INTERROGATORY NO. 2:**

10 To the extent you believe that Swift Transportation Corporation is an improper  
11 defendant in this action, please state the basis for such contention and identify any entity,  
12 which you believe would be a proper defendant to the allegations set forth in Plaintiffs'  
13 First Amended Complaint.

14 **ANSWER:**

15 Swift objects to Interrogatory No. 2 as overly broad and unduly burdensome and to  
16 the extent that it requests Swift make a legal conclusion as to what corporate entities  
17 should be a proper defendant for every allegation set forth in Plaintiffs' First Amended  
18 Complaint. If Plaintiffs can identify with some particularity what conduct or whose  
19 actions they are concerned about, as opposed to all allegations in the Complaint,  
20 Defendants will supplement this response.

21 Notwithstanding these objections, Swift responds that the currently named  
22 Defendant, Swift Transportation Corporation is no longer the name of a company. Swift  
23 Transportation Co. of Arizona, LLC is the name of the entity that would have employed  
24 the Named Plaintiffs if they had been qualified for hire and accepted job offers from  
25 Swift. To the extent the Named Plaintiffs wish to represent applicants for employment or  
26 employees in positions other than drivers, then the proper defendant may not be Swift  
27 Transportation Co. of Arizona, LLC.

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**INTERROGATORY NO. 3:**

For the time period between August 8, 2006 and the present, identify in detail your procedure for hiring or screening job applicants, including the employment application, all consumer reports/criminal background reports that are obtained, the FCRA disclosures that are given, the communication to the applicant of the hiring decision, and all paperwork or documentation that changes hands between you and the applicant from the beginning of the process until the applicant is either hired, rejected for employment or the process otherwise ends. If the procedures differ in geographic areas, explain the differences. If the procedures changed during the applicable time period, please detail the date and nature of the changes.

**ANSWER:**

Swift objects to Interrogatory No. 3 as overly broad as it requests a detailed step-by-step hiring procedure with respect to all job applicants over a 5+ year period. Swift's hiring process also involves over one-hundred current and former employees.

Plaintiffs request information for the time period from August 8, 2006 to the present. As the parties have discussed, Swift takes the position that Plaintiffs may not certify a five-year class, as the two-year statute of limitations set forth in 15 U.S.C. § 1681p applies to Plaintiffs' claims. The requested information prior to that date is therefore not relevant nor calculated to lead to the discovery of admissible evidence. Pursuant to a Stipulation between the parties, the parties agreed Swift would only be required to produce documents from August 8, 2009 forward to Plaintiffs. However, if a five-year class is certified by the Court, Swift agrees to provide to Plaintiffs the remaining documentation from August 8, 2006 to August 8, 2009. The objection contained in this paragraph will be referred to subsequently as the "Two-Year SOL Objection," and reference to the Two-Year SOL Objection shall incorporate the contents of this entire paragraph.

As the parties have previously discussed, Swift takes the position that Plaintiffs may not certify a class that includes non-driver applicants or employees, and therefore



1 objects on the ground that information sought by Plaintiffs as to non-drivers is irrelevant  
2 and not calculated to lead to the discovery of admissible evidence. Notwithstanding this  
3 position, Swift has agreed, without waiver of these objections, to provide non-driver  
4 information to Plaintiffs. Nevertheless, Swift's objection to provision of this information  
5 stands. The objection contained in this paragraph will subsequently be referred to as the  
6 "Non-Driver Objection," and reference to the Non-Driver Objection shall incorporate the  
7 contents of this entire paragraph.

8 Swift further objects to Interrogatory No. 3 to the extent that it seeks confidential,  
9 proprietary, or otherwise privileged information that is not otherwise known or publicly  
10 available to its competitors, such as Swift's policies and procedures for hiring drivers.  
11 Interrogatory No. 3 is also objectionable because it is compound in requesting the hiring  
12 process in different regions and different timeframes.

13 Notwithstanding these objections and without waiving them, Swift responds as  
14 follows regarding its hiring process for drivers:

15 Swift accepts driver applications through a variety of mediums, including through  
16 paper, in-person, mail, facsimile, trucking driving schools, and over the internet (web  
17 applications). Swift accepts web applications through multiple websites and links. Swift  
18 also accepts web applications from Randall Riley, a recruiting services vendor, which uses  
19 a generic application intended for a variety of trucking companies.

20 Depending on the type of applicant, they may have to undergo a different  
21 application process. Swift has four different classes of driver applicants:

- 22 (1) **Academy Drivers.** These drivers do not currently possess a Commercial  
23 Driver's License ("CDL") and are seeking enrollment in a Swift trucking  
24 academy in order to obtain a CDL and subsequent employment with Swift;
- 25 (2) **Trainee Drivers.** These drivers have recently obtained their CDL from a  
26 non-Swift driving school, but do not have proper driving experience, and  
27 will have to have driver training provided by Swift as part of their initial  
28 employment;

1           (3) **Experienced Drivers.** These drivers have possessed a CDL for at least 6  
2           months and have driven during the last 12 months;

3           (4) **Re-Hire Drivers.** These drivers have previously worked for Swift.

4           The application process for each type of driver is somewhat different.

5           Once submitted, applications are typically imported onto Swift's proprietary and  
6           customized electronic databases. Further, a recruiter is generally assigned to the  
7           application. This can happen in multiple ways: (1) the database can assign an application  
8           to a Swift recruiter; (2) an applicant can designate their recruiter on their application,  
9           typically where there has been prior contact with that recruiter, and that recruiter will be  
10          assigned to the application; and (3) a recruiter can go into Swift's database and assign  
11          themselves to a particular application. Assignment of an application to a recruiter can  
12          occur either before or after importation of the application into Swift's electronic database.

13          The recruiter is responsible for initiating a live contact with the applicant, typically  
14          by telephone. During this initial live contact, the recruiter directly asks the applicant  
15          certain questions, including all of the pre-qualifying questions on the application  
16          (including criminal conviction history). The recruiter will also typically explain Swift's  
17          application process and the information required by Swift, including work and driving  
18          history and criminal background information. The recruiter will normally also explain  
19          that Swift will be obtaining employment history ("DAC reports"), driving records ("MVR  
20          reports") and criminal background reports ("Widescreen reports"). Finally, the recruiter  
21          will typically, as part of the application materials, obtain the applicant's consent to  
22          procure these consumer reports.

23          After the initial contact, it is the recruiter's responsibility to ensure that the  
24          application is 100% complete and also to determine whether the applicant is eligible for  
25          employment with Swift and meets Swift's and the Department of Transportation's  
26          ("DOT") minimum qualifications. This process is called "pre-qualifying." Applicants  
27          may be disqualified from employment with Swift for a variety of reasons based upon their  
28          application or initial contact, such as possessing a bad driving record or having a DUI or



1 DWI conviction in the past 5 years. Swift has previously produced to Plaintiffs its  
2 Company Hiring Criteria as STC000085-90 and STC000150-209.

3 Once the applicant meets Swift's basic eligibility standards, the recruiter reviews  
4 and processes the application to determine whether the applicant meets Swift's basic  
5 hiring criteria. Following the recruiter review, a recruiting processor then reviews the  
6 application and confirms that it meets Swift's basic hiring criteria. The recruiter and the  
7 recruiting processor both review the application in its entirety for a variety of issues, such  
8 as gaps in employment, driver experience, and criminal background. The recruiter and the  
9 recruiting processor may contact the applicant again for additional follow-up information.

10 As just one example of the various routes that an individual's application process  
11 may take, if the application reveals a conviction, or the applicant disclosed a conviction  
12 during the live initial contact, the applicant must fill out a Conviction Form disclosing  
13 his/her criminal history. If the Conviction Form reveals solely a misdemeanor more than  
14 2 years old, the recruiter may, but is not required to, approve the applicant for further  
15 processing. In all other circumstances, the Conviction Form is then submitted to  
16 Investigations (also called the Security Department) for review. If Investigations requires  
17 an interview, they will send an e-mail to the recruiter to have the applicant contact  
18 Investigations for an interview. A Swift recruiter will then instruct the applicant to  
19 contact Investigations for an interview, where the applicant is asked questions regarding  
20 any conviction(s) the applicant disclosed on their application and/or Conviction Form, as  
21 well as any other convictions the applicant discloses during the interview. During that  
22 interview, Swift allows the applicant to explain the circumstances surrounding any  
23 convictions or charges s/he has disclosed, and further gives the applicant an opportunity to  
24 provide (or later obtain and provide) any documentation disputing the accuracy of any  
25 conviction or charge. Investigations must clear the applicant after the interview in order  
26 for the application to continue through the hiring process.

27 In addition, throughout the recruiting and/or investigation process, if the applicant  
28 cannot be reached or is unwilling or unable to respond to the recruiter's or Investigation's

1 questions, the applicant may also be disqualified from further processing.

2 At some time during the pre-qualification process, the applicant is required to  
3 provide written consent to Swift's procurement of consumer reports. An application may  
4 not proceed beyond the pre-qualification stage unless and until an applicant has provided  
5 this consent.

6 Swift has utilized different forms and language to obtain an applicant's consent to  
7 procure consumer reports over time. Prior to September 2011, applicants authorized Swift  
8 to perform background checks via language contained on Swift's employment  
9 applications. Additionally, electronic applicants affirmatively checked "Yes" to the  
10 question, "May we request information on you from outside consumer reporting  
11 agencies?" Beginning in September 2011, Swift used the FCRA Disclosure &  
12 Authorization form document Bates-labeled as STC000126-000130. In February 2012,  
13 Swift revised its FCRA Disclosure & Authorization form to the document Bates-labeled  
14 STC000131-000133. All applications during the relevant time period contained  
15 acknowledgments that the applicant had to consent to before Swift would accept their  
16 application and process it further. The language of these acknowledgments varied over  
17 time, as can be seen on documents Bates-labeled STC000001-000005, STC000038-  
18 000042, and STC000096-000125.

19 Swift Academy Driver applicants must also take a mandatory online course and  
20 score 80% or higher for the application to proceed in the hiring process.

21 After the recruiter has completed the pre-qualification process, and after receiving  
22 the applicant's written consent to procure consumer reports, the recruiter may click a  
23 button in the electronic database to order consumer reports from HireRight. The recruiter  
24 will receive a DAC and MVR report and review those reports for any concerns or  
25 disqualifying information under the Company Driver Hiring Criteria. The recruiter and/or  
26 processor then confirms the application's information and other driver hiring criteria as  
27 provided in the Swift Company Driver Hiring Criteria, produced as documents Bates-  
28 labeled STC000085-000090 and STC000136-000209. The recruiter can decline the

1 applicant if the applicant fails to meet any Hiring Criteria or if the DAC or MVR reveals  
2 that the applicant has provided false information on their application.

3 At the same time, a Widescreen criminal background report is ordered from  
4 HireRight, but the Widescreen report goes directly to Investigations only, not to the  
5 recruiter. Investigations reviews the Widescreen report to verify whether there is any  
6 criminal conviction information regarding the applicant. If there is any such information,  
7 Investigations sends an e-mail to the assigned recruiter telling that recruiter to have the  
8 applicant contact Investigations for an interview.

9 The Investigations interview when a conviction appears on the Widescreen report  
10 is largely the same as the process described above when an applicant voluntarily discloses  
11 a conviction on their application and fills out a Conviction Form. Swift interviews the  
12 applicant and allows the applicant to explain the circumstances surrounding any  
13 convictions or charges, including an opportunity to provide any documentation disputing  
14 the accuracy of any conviction or charge. Investigations must clear the applicant after the  
15 interview in order for the applicant to continue through the hiring process.

16 In addition, an applicant must pass a DOT physical and drug test screening. If an  
17 applicant fails either of these tests, they are declined pursuant to DOT regulations.

18 After confirmation that the applicant has met all Swift hiring and screening criteria,  
19 Swift schedules the applicant to attend orientation. An offer of employment is  
20 conditioned upon successful completion of orientation. An applicant could be disqualified  
21 at orientation for a variety of reasons. An applicant could fail the road test that is  
22 administered during orientation. An applicant could disclose information during  
23 orientation that reveals that s/he falsified the contents of his/her application. An applicant  
24 could fail the DOT mandated drug screen and/or physical. Or, as with Mr. Daniel, an  
25 applicant could disclose criminal conviction information at orientation that was not  
26 disclosed during the initial recruiter contact, on the employment application or on the  
27 Widescreen report. If that occurs, the Investigation interview process is followed and the  
28 applicant must be approved by Investigations to continue in the hiring process.

1 In the event Swift based a decision not to hire an applicant on information obtained  
 2 in a consumer report, Swift takes different approaches for in-person applicants and other  
 3 applicants. For in-person applicants, beginning in November 2011, Swift issues a pre-  
 4 adverse action notice to the applicant and subsequently issues an adverse action letter.  
 5 For not-in-person applicants, also beginning in November 2011, Swift issues the applicant  
 6 an adverse action letter, as well as an FCRA summary of rights, within three days of its  
 7 determination to take adverse action. Prior to November 2011, any notices of adverse  
 8 action, if given, would have been oral.

9 The foregoing relates to applicants for driver positions. Swift will supplement this  
 10 response to describe its process regarding applicants for non-driver positions.

11 **INTERROGATORY NO. 4:**

12 For the time period between August 8, 2006 and the present, provide the names and  
 13 addresses of all recruiting personnel, human resource personnel or your other employees  
 14 who process any of the following documents pertaining to job applicants seeking  
 15 employment with you:

- 16 a. Requests for criminal background reports, driving records or any other
- 17 consumer report;
- 18 b. Job applications received in person, electronically, orally, by facsimile, or
- 19 by mail; and
- 20 c. Adverse Action or "Pre-Adverse action" notices.

21 **ANSWER:**

22 Swift objects to Interrogatory No. 4 as overly broad and unduly burdensome as not  
 23 all recruiting personnel, human resource personnel, or other Swift employees who process  
 24 certain consumer reports, job applications, and adverse action or pre-adverse action  
 25 notices will have information that is relevant or material to Plaintiffs' claims or efforts to  
 26 certify the purported class.

27 Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection to  
 28 Interrogatory No. 4.

Notwithstanding these objections and without waiving them, Swift responds that the following Swift employees process or processed documents including consumer reports, job applications and pre-adverse and/or adverse action notices:

NAME	LOCATION OF EMPLOYMENT
Donald Anderson	Phoenix, Arizona
Irene Arredondo	Phoenix, Arizona
Emily Baker	Edwardsville, Kansas
Paul Barta	Phoenix, Arizona
Cindy Bouch	Phoenix, Arizona
Riley Branch	Lancaster, Texas
Karina Torres Breceda	Phoenix, Arizona
Jerrald Calvillo	Columbus, Ohio
Roy Carrasco	Phoenix, Arizona
Crege Carter	Memphis, Tennessee
Melissa Castillo	Phoenix, Arizona
Brooke Chamberlain	Phoenix, Arizona
Ronnie Chandler	Phoenix, Arizona
Shannon Cologna	Phoenix, Arizona
Javier Covian	Phoenix, Arizona
Brandon Cragun	Menasha, Wisconsin
Jacqueline Curry	Phoenix, Arizona
Kimberly Deducca	Lancaster, Texas
Araceli Deleon	Phoenix, Arizona
Douglas Driscoll	Sumner, Washington
Joey Fowler	Greer, South Carolina
Sherry Goggin-Rysedorph	Phoenix, Arizona



1	Melody Gonzalez	Phoenix, Arizona
2	Sherry Haldeman	Harrisburg, Pennsylvania
3	Kevin Haring	Phoenix, Arizona
4	William Hartley	Lewiston, Idaho
5	Benjamin Harvey	Atlanta, Georgia
6	Christopher Hedges	Phoenix, Arizona
7	Kris Kepler	Columbus, Ohio
8	Dawn Linville	Edwardsville, Kansas
9	Lizanne Luke	Phoenix, Arizona
10	Ludivina Marin	Phoenix, Arizona
11	Veronica Martinez	Phoenix, Arizona
12	Autumn Matte	Phoenix, Arizona
13	Erica McCoy	Phoenix, Arizona
14	Donna Moore	Phoenix, Arizona
15	Mayra Nieto	Phoenix, Arizona
16	Abraham Ornelas	Phoenix, Arizona
17	Steven Ornelas	Phoenix, Arizona
18	Mario Padilla	Phoenix, Arizona
19	Sonya Pantoja	Phoenix, Arizona
20	Stephanie Pedroza	Phoenix, Arizona
21	Nancy Perkins	Syracuse, New York
22	Michael Person	Phoenix, Arizona
23	Lloyd Pumphrey	Fontana, California
24	Deanna Rada	Phoenix, Arizona
25	Daniel Ramirez	Phoenix, Arizona
26	Corina Salgado	Phoenix, Arizona
27	Thomas Selander	Phoenix, Arizona
28		



Michael Short	Phoenix, Arizona
Amber Smith	Phoenix, Arizona
Tamara Strickland	Memphis, Tennessee
Shannon Sund	Phoenix, Arizona
Lisa Taylor	Lathrop, California
Gilbert Toscano	Phoenix, Arizona
Rachelle Valle	Phoenix, Arizona
Tamala Wilchert	Memphis, Tennessee

The following individuals in the Security Department processed criminal background reports, driving records, and other consumer reports. They also would have been involved in part with processing applications and may have been involved in giving adverse action notices.

NAME	LOCATION OF EMPLOYMENT
Michelle Adamson	Phoenix, Arizona
Mark Donahue	Fontana, California
Shawn Driscoll	Phoenix, Arizona
Angelica Flores	Phoenix, Arizona
Aaron Peterson	Phoenix, Arizona
Patricia Ramos	Phoenix, Arizona
Berenice Ruiz	Phoenix, Arizona

#### **INTERROGATORY NO. 5:**

For the period between August 8, 2006 and the present, provide the names and addresses of all persons who applied for an employment position with you and about whom you obtained a consumer report, including the date the consumer report was obtained, and whether you had in-person contact with such persons prior to obtaining the

1 consumer report.

2 **ANSWER:**

3 Swift objects to Interrogatory No. 5 as overly broad and unduly burdensome as  
4 Swift receives thousands of applications for employment each year. Compliance with this  
5 interrogatory is onerous and overly burdensome as it requires identifying thousands of  
6 individuals and the corresponding information requested by Plaintiffs about each  
7 individual, regardless of the position they applied for and when.

8 Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

9 Swift also objects to Interrogatory No. 5 to the extent that it seeks confidential,  
10 proprietary, or otherwise privileged information that is not otherwise known or publicly  
11 available to its competitors, such as the names of, and information regarding, persons that  
12 were provided to Swift by any consumer reporting agency. Certain information is also  
13 subject to the confidentiality provision and other terms of the written contracts between  
14 Swift and certain consumer reporting agencies.

15 In addition, Swift objects to Interrogatory No. 5 as overly broad and unduly  
16 burdensome because the purported class is not appropriate for class action treatment.  
17 Among other issues, the decision to offer employment, and if accepted, to hire driver  
18 applicants involves multiple individualized inquiries as to that driver's qualifications and  
19 employment application including, but not limited to, whether Swift ordered a background  
20 report for the applicant, whether the applicant provided false information on the  
21 employment application, whether any disclosed information was automatically  
22 disqualifying, whether the applicant meets DOT standards, and whether the applicant met  
23 Swift's standards. Various individualized inquiries also apply to each applicant's  
24 involvement in the class action, such as when the applicant was on inquiry notice of a  
25 possible violation of the FCRA and whether the applicant only seeks statutory and  
26 punitive damages, as opposed to actual damages.

27 Swift further objects to the extent this request seeks electronic information as it  
28 may call for information that is not readily accessible.

1 Notwithstanding these objections and without waiving them, Swift responds that  
2 the information requested in Interrogatory No. 5 may be obtained from documents  
3 containing the data from applications submitted by individuals seeking driver positions at  
4 Swift, as they exist in the proprietary electronic databases Swift employees use during the  
5 recruiting and hiring process. *See, e.g.*, documents Bates-labeled STC000456-099883,  
6 STC104789-113111; STC126681-178720; STC212832-254274. Accordingly, Swift  
7 incorporates by reference its responses, objections, and the responsive documents  
8 produced pursuant to Requests for Production Nos. 3-6, as if fully set forth herein.

9 Swift has also produced two searchable databases containing responsive  
10 information: (1) a web recruiting database containing screen shots of the internet  
11 applications for each individual who applied for a driver position at Swift from August 8,  
12 2009 through February 2011; and (2) a database used by Swift's security department that  
13 contains a spreadsheet detailing the individuals that had contact with Swift's security  
14 department during the application process. *See, e.g.*, documents Bates-labeled  
15 STC256174-256175. Accordingly, Swift incorporates by reference its responses,  
16 objections, and responsive documents produced pursuant to Requests for Production Nos.  
17 3-6 & 22, as if fully set forth herein.

#### 18 **INTERROGATORY NO. 6:**

19 For the period between August 8, 2006 and the present, provide the following  
20 information pertaining to your policies or procedures to ensure compliance with the Fair  
21 Credit Reporting Act:

- 22 a. the date the policy or procedure was first created;
- 23 b. identify individuals who drafted and/or revised the policy or procedure;
- 24 c. identify any changes made to the policy or procedure (inclusive of what was  
25 added, deleted, or replaced) and provide the dates of such changes;
- 26 d. identify the individuals who have access to and whose function is to review  
27 consumer reports for employment purposes; and
- 28 e. identify all documents containing such policies or procedures.

1 **ANSWER:**

2 Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

3 In addition, Swift objects to Interrogatory No. 6 to the extent that it seeks  
4 information protected by the attorney-client privilege and/or the work-product doctrine.  
5 Interrogatory No. 6 is also objectionable to the extent that it seeks confidential,  
6 proprietary, or otherwise privileged information that is not otherwise known or publicly  
7 available to its competitors. Certain information is also subject to the confidentiality  
8 provision and other terms of the written contracts between Swift and certain consumer  
9 reporting agencies.

10 Notwithstanding these objections and without waiving them, Swift has maintained  
11 various disclosure forms and applications for a number of years by which applicants  
12 authorize Swift to obtain job-related information about the applicants. For driver  
13 applications, Swift received authorization to perform background checks if job-related.  
14 Prior to September 2011, the driver applications contained acknowledgments that the  
15 applicant had to answer before finalizing their application submission. The language of  
16 these acknowledgments varied over time, as can be seen on documents Bates-labeled  
17 STC000001-000005, STC000038-000042, and STC000096-000125. Swift revised its  
18 policy in September 2011 by providing driver applicants during the application process  
19 with an FCRA Disclosure and Authorization form. *See, e.g.*, document Bates-labeled  
20 STC000126-000130. In February 2012, Swift revised its policy, which included  
21 providing driver applicants with a different FCRA disclosure form. *See, e.g.*, document  
22 Bates-labeled STC000131-000133.

23 Beginning in November 2011, when recruiters access Swift's proprietary and  
24 customized electronic databases and ensure an applicant's information is complete and  
25 accurate, the recruiters select whether the applicant is an in-person or non-in-person  
26 applicant at the time of application. This selection then determines the type of notice an  
27 applicant receives if adverse action is taken against them. For in-person applicants, Swift  
28 issues a pre-adverse action notice to the applicant and then subsequently issues an adverse

1 action letter. For other not-in-person applicants, also beginning in November 2011, Swift  
2 issues the applicant a letter within three days of its determination to take adverse action.  
3 Gary Fitzsimmons, Shawn Driscoll and Swift's in-house counsel revised these policies  
4 and procedures as to driver applications.

5 Swift also incorporates by reference its responses and objections to Interrogatory  
6 Nos. 3, 12, & 13, as if fully set forth herein. As to individuals who have access to and  
7 whose function is to review background reports, Swift incorporates by reference its  
8 responses and objections to the second list of individuals, Interrogatory No. 4, as if fully  
9 set forth herein. Further, documents containing Swift's policies or procedures have  
10 already been produced in this matter. *See, e.g.,* Swift's First Supplemental Disclosure  
11 Statement and documents Bates-labeled as STC000085-000090 and STC000126-000209.

12 The foregoing relates to applicants for driver positions. Swift will supplement this  
13 response to describe its process regarding applicants for non-driver positions.

14 **INTERROGATORY NO. 7:**

15 Identify all experts and non-experts known to you who have knowledge of facts  
16 relevant to this case, and state the subject of testimony or knowledge, giving a brief  
17 description thereof, and identify all documents received from or communicated to such  
18 person by you regarding the Named Plaintiffs, or the subject matter of this case. If you  
19 intend to qualify any of these persons as experts, please so indicate, giving their areas of  
20 expertise and their credentials as experts.

21 **ANSWER:**

22 Swift objects to Interrogatory No. 7 as overly broad and unduly burdensome as the  
23 list of all experts and non-experts who have knowledge of facts relevant to this case is  
24 likely to be so lengthy that a proper response is onerous and borders on harassment. Swift  
25 receives thousands of applications for employment each year, and these individuals may  
26 have some knowledge regarding the facts relevant to this case. Swift also has over one-  
27 hundred current employees, as well as former employees, who potentially have  
28 knowledge of facts relevant to this case. Identifying each of these thousands of



1 individuals, and the corresponding information requested by Plaintiffs, is unduly  
2 burdensome.

3 Swift also objects to Interrogatory No. 7 to the extent that it seeks information  
4 protected by the attorney-client privilege and/or the work-product doctrine. Swift further  
5 objects to Interrogatory No. 7 to the extent that it seeks confidential, proprietary, or  
6 otherwise privileged information that is not otherwise known or publicly available to its  
7 competitors, such as policies outlining Swift's hiring procedures or the written contracts  
8 between Swift and any consumer reporting agencies. Certain information is also subject  
9 to the confidentiality provision and other terms of the contracts between Swift and certain  
10 consumer reporting agencies. Interrogatory No. 7 is also objectionable to the extent that  
11 the information requested is already known by, or available to, Plaintiffs, as evidenced in  
12 Swift's disclosure statements and documents produced contemporaneously therewith.

13 Notwithstanding these objections, Swift responds that it has not yet engaged or  
14 retained any experts in this case. Expert disclosures are not due until April 1, 2013. Swift  
15 will supplement its response in the event that Swift engages or retains a testifying expert  
16 in this case. As for non-experts with knowledge of facts relevant to this case, Swift  
17 incorporates by reference its responses and objections to Interrogatory Nos. 1, 4, 5, and  
18 10, and information provided in Swift's disclosure statements, as if fully set forth herein.

19 **INTERROGATORY NO. 8:**

20 Identify all of your employees, representatives, or the like, who communicated  
21 with Named Plaintiffs, and/or with any third party communicating on behalf of the Named  
22 Plaintiffs, regarding their employment applications and/or consumer reports and for each  
23 such person, state his or her job title and job description and the subject, nature and  
24 content of the communications.

25 **ANSWER:**

26 Swift objects to Interrogatory No. 8 to the extent that the information requested is  
27 already known by, or available to, the Named Plaintiffs, as they are in the best position to  
28 know who communicated with them, and as evidenced in Swift's disclosure statements



1 and documents produced contemporaneously therewith.

2 Notwithstanding these objections and without waiving them, in response to  
3 Interrogatory No. 8, Swift incorporates by reference its response and objections to  
4 Interrogatory No. 1 to the extent the individuals identified in Interrogatory No. 1  
5 communicated with the Named Plaintiffs.

6 **INTERROGATORY NO. 9:**

7 Did you take adverse action as to Named Plaintiffs? If yes, state the date and  
8 provide a full description of the actions taken. If your answer is no, state all facts and  
9 legal basis which support your answer.

10 **ANSWER:**

11 Swift objects to Interrogatory No. 9 to the extent that it requests Swift make a  
12 legal conclusion regarding whether Swift took adverse action against the Named  
13 Plaintiffs.

14 Notwithstanding this objection and without waiving it, Swift responds that Swift  
15 did not hire Kelvin Daniel, but that decision was not an adverse action that required  
16 compliance with the Fair Credit Reporting Act. On January 24, 2011, at a Swift  
17 orientation, Mr. Daniel voluntarily disclosed several convictions in response to Swift's  
18 admonition that applicants accurately fill out and disclose information on their  
19 applications. Based on those disclosures, which did not appear on his application or his  
20 criminal background report, Swift told Mr. Daniel and told him he would need to follow  
21 up with Swift's Security Department. On January 27, 2011, during his telephonic  
22 interview with the Security Department, Mr. Daniel admitted that he failed to disclose  
23 these convictions on his employment application, and his conditional job offer was then  
24 revoked. That decision was not based in whole or in part on his consumer report.

25 Swift did not hire Plaintiff Tanna Hodges following her December 2009  
26 application, but that decision was not an adverse action requiring compliance with the Fair  
27 Credit Reporting Act. Ms. Hodges' September 2009 applications, while received, were  
28 not processed beyond the application stage and no consumer report was ever ordered by

1 Swift with respect to these applications. With regard to her December 12, 2009 web  
2 application, Ms. Hodges answered "No" to the question of whether she had ever been  
3 convicted of a criminal offense. Following the processing of that web application, Swift  
4 procured consumer reports on Ms. Hodges that revealed a number of prior criminal  
5 convictions. Swift requested that Ms. Hodges contact and interview with its Security  
6 Department. On December 14, 2009, during her security interview regarding her  
7 application, Ms. Hodges confirmed that she had multiple different criminal convictions,  
8 despite responding in the negative on her web application to the question, "Have you ever  
9 been convicted of a criminal offense?" At this point, Ms. Hodges was disqualified from  
10 employment with Swift.

11 **INTERROGATORY NO. 10:**

12 For Named Plaintiffs and each putative class member you terminated, denied or  
13 delayed employment based in whole or in part upon information contained in a consumer  
14 report between August 8, 2006 and the present, identify each person's name and address,  
15 and separately state the dates, on which you:

- 16 a. obtained their written consent to obtain a consumer report;
- 17 b. obtained a consumer report;
- 18 c. provided the employee or applicant with a copy of the consumer report;
- 19 d. discharged, denied or delayed employment to the employee or applicant;
- 20 e. provided the employee or applicant with a written summary of FCRA rights;
- 21 f. sent the post-adverse notices required by 15 U.S.C. §1681m to the  
22 individual.

23 **ANSWER:**

24 Swift objects to Interrogatory No. 10 as overly broad and unduly burdensome as  
25 Swift receives thousands of applications for employment each year. Compliance with this  
26 interrogatory is onerous and overly burdensome as it requires identifying thousands of  
27 individuals and the corresponding information requested by Plaintiffs about each  
28 individual, regardless of the position they applied for and when. The breadth of this

1 request borders on harassment.

2 Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

3 Swift also objects to Interrogatory No. 10 to the extent that it seeks confidential,  
4 proprietary, or otherwise privileged information that is not otherwise known or publicly  
5 available to its competitors, such as the names of, and information regarding, persons that  
6 were provided to Swift by any consumer reporting agency. Certain information is also  
7 subject to the confidentiality provision and other terms of the written contracts between  
8 Swift and certain consumer reporting agencies.

9 In addition, Swift objects to Interrogatory No. 10 as overly broad and unduly  
10 burdensome because the purported class is not appropriate for class action treatment.  
11 Swift further objects to the extent this request seeks electronic information as it may call  
12 for information that is not readily accessible.

13 Swift also objects to the interrogatory as phrased because it assumes facts about the  
14 hiring process. As set forth in Swift's Answer to Interrogatory No. 3, hiring at Swift  
15 involves multiple steps and multiple people and the contents of background reports do not  
16 necessarily determine the decisions Swift makes.

17 Notwithstanding these objections and without waiving them, Swift responds as  
18 follows:

- 19
- 20 • Kelvin Daniel, 700 Wapello Circle, Natomas, CA 95835. Swift obtained  
21 Mr. Daniel's consent to investigate all references and to secure additional  
22 job-related information about Mr. Daniel with his application on December  
23 27, 2010. He also consented and authorized Swift to obtain information on  
24 him from outside consumer reporting agencies. Swift ordered a Widescreen  
25 report from HireRight Solutions, Inc. ("HireRight") on Mr. Daniel on  
26 December 28, 2010. That report revealed no criminal convictions and  
27 played no role in the decision not to hire Mr. Daniel. On January 28, 2011,  
28 Swift decided not to hire Mr. Daniel and revoked his conditional offer of  
employment due to Mr. Daniel's voluntary disclosure of criminal  
convictions during orientation on January 24, 2011, his confirmation of  
those convictions during a telephonic interview with the Security  
Department on January 27, 2011, and consequently his admission that he  
had falsified his employment application by failing to disclose any of his  
criminal convictions on the application.

- Tanna Hodges, 337 IRA Apt. F, San Antonio, TX 78209. Swift never procured a consumer report with respect to Ms. Hodges' September 25 and 29, 2009 employment applications. Swift obtained Ms. Hodges' consent to investigate all references and to secure additional information about Ms. Hodges with her web application on December 14, 2009. She also consented and authorized Swift to obtain information about her from outside consumer reporting agencies. Swift ordered a criminal background report from HireRight on Ms. Hodges on December 14, 2009. On December 14, 2009, after Ms. Hodges confirmed her prior criminal convictions in an interview with Swift's Security Department, Swift decided not to hire Ms. Hodges due to her failure to disclose her convictions on her employment application and because she did not meet Swift hiring criteria.

Additional information requested in Interrogatory No. 10 may be obtained from documents containing the data from applications submitted by individuals seeking driver positions at Swift, as they exist in the proprietary electronic databases Swift employees use during the recruiting and hiring process. *See, e.g.,* documents Bates-labeled STC000456-099883, STC104789-113111; STC126681-178720; STC212832-254274. Accordingly, Swift incorporates by reference its responses, objections, and the responsive documents produced pursuant to Requests for Production Nos. 3-6, as if fully set forth herein.

Swift also produced two searchable databases containing responsive information: (1) a web recruiting database containing screen shots of the internet applications for each individual who applied for a driver position at Swift from August 8, 2009 through February 2011 and (2) a database used by Swift's security department that contains a spreadsheet detailing the individuals that had contact with Swift's security department during the application process. *See, e.g.,* documents Bates-labeled STC256174-256175. Accordingly, Swift incorporates by reference its responses, objections, and responsive documents produced pursuant to Requests for Production Nos. 3-6 & 22, as if fully set forth herein.

The foregoing relates to applicants for driver positions. Swift will supplement with respect to applicants for non-driver positions.

**INTERROGATORY NO. 11:**

Identify all documents in your possession or control from which any of the information requested in Interrogatory No. 10 can be derived, and for each such document, identify the following:

- a. the location of the document;
- b. the custodian of the document; and
- c. your specific estimate of the time and expense required to access and copy the document.

**ANSWER:**

Swift objects to Interrogatory No. 11 as overly broad and unduly burdensome as not all documents in Swift's possession or control from which the information requested in Interrogatory No. 10 can be derived will be relevant or material to Plaintiffs' claims or efforts to certify the purported class. Swift receives thousands of applications for employment each year. Compliance with this interrogatory is onerous and overly burdensome as it requires Swift to access and process data that is not readily accessible to determine whether and to what extent documents exist that may arguably be relevant to the facts of this case. Interrogatory No. 11 requires Swift to identify thousands of applications and obtain all corresponding information regarding each applicant. Further, multiple documents contain the same information, rendering many documents duplicative of one another.

Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

Swift also objects to Interrogatory No. 11 to the extent that it seeks confidential, proprietary, or otherwise privileged information that is not otherwise known or publicly available to its competitors, such as the names of, and information regarding, persons that were provided to Swift by any consumer reporting agency. Certain information is also subject to the confidentiality provision and other terms of the written contracts between Swift and certain consumer reporting agencies.

In addition, Swift objects to Interrogatory No. 11 as overly broad and unduly



1 burdensome because the purported class is not appropriate for class action treatment.  
2 Swift further objects to the extent this request seeks electronic information as it may call  
3 for information that is not readily accessible. Interrogatory No. 11 is also objectionable to  
4 the extent that it calls for legal conclusions about whether adverse action was taken, what  
5 action occurred, and why.

6 Notwithstanding these objections and without waiving them, Swift responds that  
7 the requested information can be derived from the employment applications Swift  
8 received from driver applicants. The employment applications, including authorizations,  
9 releases, criminal background reports, and other associated documents, are located on  
10 Swift's proprietary and customized electronic databases. Swift has produced employment  
11 applications and related documents, and Swift incorporates by reference its responses,  
12 objections, and responsive documents to Plaintiffs' Requests for Production Nos. 3-6 as if  
13 fully set forth herein.

14 Swift also produced two searchable databases containing responsive information:  
15 (1) a web recruiting database containing screen shots of the internet applications for each  
16 individual who applied for a driver position at Swift from August 8, 2009 through  
17 February 2011 and (2) a database used by Swift's security department that contains a  
18 spreadsheet detailing the individuals that had contact with Swift's security department  
19 during the application process. *See, e.g.*, documents Bates-labeled STC256174-256175.  
20 Accordingly, Swift incorporates by reference its responses, objections, and responsive  
21 documents produced pursuant to Requests for Production Nos. 3-6 & 22, as if fully set  
22 forth herein.

23 The foregoing relates to applicants for driver positions. Swift will supplement with  
24 respect to applicants for non-driver positions.

25 **INTERROGATORY NO. 12:**

26 Identify and describe all efforts by you to comply with the FCRA since August 8,  
27 2006, including internal audits and audits by outside companies or individuals and  
28 identify all communications and other documents that regard same.



1 **ANSWER:**

2 Swift objects to Interrogatory No. 12 as overly broad and unduly burdensome as  
3 not all efforts to comply with the FCRA will be relevant or material to Plaintiffs' claims  
4 or efforts to certify the purported class. Swift's efforts to comply with other aspects of the  
5 FCRA, other than the issues raised by Plaintiffs, are not relevant or material to this  
6 dispute.

7 Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

8 Swift further objects to Interrogatory No. 12 to the extent that it seeks information  
9 protected by the attorney-client privilege and/or the work-product doctrine. In addition,  
10 Swift objects to Interrogatory No. 12 to the extent that it seeks confidential, proprietary, or  
11 otherwise privileged information that is not otherwise known or publicly available to its  
12 competitors, such as Swift's policies and procedures for complying with the FCRA.  
13 Certain information is also subject to the confidentiality provision and other terms of the  
14 written contracts between Swift and certain consumer reporting agencies. Interrogatory  
15 No. 12 is also objectionable because it is compound in requesting that Swift both identify  
16 all efforts to comply with the FCRA and communications and other documents regarding  
17 the same.

18 Notwithstanding these objections and without waiving them, Swift incorporates by  
19 reference its responses and objections to Interrogatory Nos. 3, 6, & 13 as if fully set forth  
20 herein. Swift further responds that various Swift employees, including in-house counsel,  
21 Gary Fitzsimmons, Shawn Driscoll, and employees in recruiting have discussed  
22 compliance with the FCRA. Other than its privileged communications with in-house and  
23 external counsel, Swift has not conducted a review or audit by an outside company or  
24 individual to comply with the FCRA.

25 **INTERROGATORY NO. 13:**

26 Identify and describe the training that you provided to your employees since  
27 August 8, 2006 about the FCRA and your compliance with the FCRA.

28 ///

**ANSWER:**

Swift asserts the Two-Year SOL Objection, as well as the Non-Driver Objection.

Swift further objects to Interrogatory No. 13 to the extent that it seeks information protected by the attorney-client privilege and/or the work-product doctrine. In addition, Swift objects to Interrogatory No. 13 to the extent that it seeks confidential, proprietary, or otherwise privileged information that is not otherwise known or publicly available to its competitors, such as training Swift provides to its employees about the FCRA and associated policies and procedures. Certain information is also subject to the confidentiality provision and other terms of the written contracts between Swift and certain consumer reporting agencies. Interrogatory No. 13 is also objectionable because it is compound in requesting that Swift identify and describe training "about the FCRA" and Swift's training for "compliance with the FCRA."

Notwithstanding these objections and without waiving them, Swift responds that its employees use standard operating procedures for processing driver and non-driver applications that have at different times included different disclosures and forms that have always required recruiters to obtain authorization from an applicant prior to requesting consumer reports and interviewing any applicants and giving them an opportunity to explain and contest the contents of any Widescreen report before Swift declines to hire an individual based upon their criminal record. *See, e.g.,* documents Bates-labeled STC000085-000090, and STC000126-000209.

**INTERROGATORY NO. 14:**

Identify all legal opinions or other compliance opinions you received, internally or otherwise, to support the legality of your application procedures or use of consumer reports for employment purposes. If you agree to forgo any defense to "willfulness" that is based in full or part on advice of counsel and would thus assert a claim of privilege, please state such in lieu of a substantive answer.

**ANSWER:**

Swift objects to Interrogatory No. 14 as overly broad and unduly burdensome to

1 the extent it requests Swift identify all legal or compliance opinions it received about  
2 application procedures or consumer reports without any time limitation.

3 Swift further objects to Interrogatory No. 14 to the extent that it seeks information  
4 protected by the attorney-client privilege and/or the work-product doctrine. In addition,  
5 Swift objects to Interrogatory No. 14 to the extent that it seeks confidential, proprietary, or  
6 otherwise privileged information that is not otherwise known or publicly available to its  
7 competitors, such as legal and other compliance opinions Swift relies upon for compliance  
8 with the FCRA. Interrogatory No. 14 is also objectionable to the extent that it calls for  
9 speculation or requests Swift make a legal conclusion regarding the applicability of any  
10 defenses before the purported class is even certified and while discovery is ongoing.

11 Notwithstanding these objections and without waiving them, Swift responds that it  
12 does not have information responsive to this request dated before August 9, 2011. To the  
13 extent any such privileged opinions have been received before that date, Swift will log  
14 them on its privilege log. Swift has received other legal opinions from time to time, but  
15 for different purposes that are not within the scope of this request, and any such opinions  
16 are privileged. Swift does not forego or waive any defense to “willfulness.”

17 **INTERROGATORY NO. 15:**

18 State in full detail every action, communication and decision that you took or made  
19 regarding the Named Plaintiffs’ applications for employment, including the dates of all  
20 such actions or events, the person(s) involved and all documents that pertain to the action  
21 taken.

22 **ANSWER:**

23 Swift objects to Interrogatory No. 15 as overly broad and unduly burdensome as  
24 not every action, communication or decision Swift took or made regarding the Named  
25 Plaintiffs’ application for employment will be relevant or material to Plaintiffs’ claims or  
26 efforts to certify the purported class. Multiple Swift employees worked on the Named  
27 Plaintiffs’ applications for employment, several of whom no longer work at Swift.

28 Swift also objects to Interrogatory No. 15 to the extent that the information

1 requested is already known by, or available to, the Named Plaintiffs, as they are in the  
2 best position to know what was communicated to them by Swift.

3 Notwithstanding these objections, Swift incorporates by reference its responses and  
4 objections to Interrogatory Nos. 1, 8, & 9 and Requests for Production Nos. 2 & 15, as if  
5 fully set forth herein.

6 **INTERROGATORY NO. 16:**

7 If you deny that a class action can be properly certified in this case, state all facts  
8 and all legal contentions as applied to the facts that support your denial.

9 **ANSWER:**

10 Swift objects to Interrogatory No. 16 as overly broad and unduly burdensome to  
11 the extent that it requests Swift identify all facts supporting a denial of class certification  
12 in this case. Swift receives thousands of applications for employment each year.  
13 Compliance with this interrogatory is onerous on Swift as it requires identifying thousands  
14 of applications, the corresponding information requested by Plaintiffs for each individual,  
15 and the basis for why each individual applicant is not a member of the purported class.  
16 Such a request borders on harassment.

17 Swift also objects to Interrogatory No. 16 to the extent it seeks information  
18 protected by the attorney-client privilege and/or the work-product doctrine. Swift further  
19 objects to Interrogatory No. 16 to the extent that it calls for speculation or requests Swift  
20 make a legal conclusion as to facts or legal contentions that support denial of Plaintiffs'  
21 purported class.

22 In addition, Swift objects to Interrogatory No. 16 as overly broad and unduly  
23 burdensome on the Two-Year SOL Objection and the Non-Driver Objection and because  
24 the purported class is not appropriate for class action treatment. Swift further objects to  
25 the extent this request seeks electronic information as it may call for information that is  
26 not readily accessible.

27 Notwithstanding these objections, Swift responds that the burden of establishing  
28 entitlement to class certification rests with Plaintiffs. *Zinser v. Accufix Research Institute,*

1 *Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). At this early juncture of discovery, Swift  
2 cannot be expected to anticipate, much less respond to, Plaintiffs' various arguments  
3 related to their entitlement to class certification. At present, Plaintiffs have not produced  
4 evidence sufficient to establish, *inter alia*, commonality, typicality or adequacy of  
5 representation under Rule 23(a) of the Federal Rules of Civil Procedure, not to mention  
6 whether class treatment is appropriate under Rule 23(b).

7 The purported class also cannot be properly certified because the decision to offer  
8 employment and, if accepted, to hire a driver applicant involves multiple individualized  
9 inquiries as to that driver. Individualized inquiries that preclude class certification include  
10 but are not limited to:

- 11 • Whether the applicant applied in-person or via another method;
- 12 • Whether the applicant was qualified to drive under the Company's
- 13 standards;
- 14 • Whether Swift ordered a consumer report for the applicant;
- 15 • What information the applicant provided on their employment application,
- 16 including any false information;
- 17 • Whether the applicant was qualified to drive under DOT standards;
- 18 • Whether the applicant was automatically disqualified from employment
- 19 with Swift and, if so, why?;
- 20 • Whether the applicant challenged information contained on a consumer
- 21 report;
- 22 • Whether the applicant received a copy of the consumer report;
- 23 • What the applicant told the recruiter about his/her application, background,
- 24 and experience;
- 25 • What information the applicant's consumer report contained, if any, that
- 26 would disqualify the applicant from employment with Swift;
- 27 • What type of consent the applicant provided, whether oral, electronic, or
- 28 otherwise, from Swift to obtain a consumer report;

- Whether Swift based any hiring decision on an applicant's consumer report;
- What factors led to the decision to hire or not hire the applicant;
- Whether the applicant was interviewed and, if so, what the applicant said during the interview, whether it was truthful, and what impression the applicant made during the interview;
- What the recruiter and/or processor told the applicant about his/her application;
- Whether that information was provided to the applicant in writing;
- Whether Swift's Security Department interviewed the applicant;
- What the applicant told the Security Department official;
- What the Security Department official told the applicants;
- What type of notice the applicant had regarding a possible violation of the FCRA; and
- What types of damages applicant seeks, including statutory and punitive damages, as opposed to actual damages.

In addition, Swift incorporates by reference its response and objections to Interrogatory No. 9 as if fully set forth herein.

DATED this 18th day of July, 2012.

SNELL & WILMER LLP.

By: Joseph A. Kroeger

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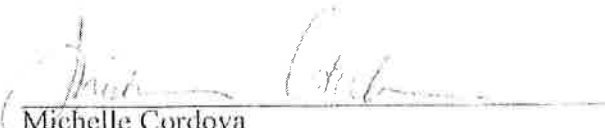
VERIFICATION

STATE OF ARIZONA                    }  
COUNTY OF MARICOPA            } ss.

I, MICHELLE CORDOVA, being first duly sworn upon my oath, depose and say that:

I am a Recruiting Regional Leader for Swift Transportation Co. of Arizona, L.L.C. the defendant in the matter of *Daniel et al v. Swift Transportation Corp.*, Case No. 2:11-cv-01548-PHX-ROS. I have reviewed the foregoing Responses to Plaintiffs' First Set of Interrogatories. I am authorized to verify and do hereby verify same under penalty of perjury as being true and correct to my personal knowledge, except as to those matters as to which I lack personal knowledge, but am informed and believe to be true and correct based upon information and belief, and which I verify on that basis.

DATED this 18 th day of July, 2012,

  
Michelle Cordova

Snell & Wilmer

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2012,  
the original of the foregoing will be  
served via Federal Express to the  
following counsel of record:

Anthony R. Pecora  
Dennis M. OToole  
Matthew A. Dooley  
Stumphauzer OToole McLaughlin  
McGlamery & Loughman Company  
5455 Detroit Rd.  
Sheffield Village, OH 44054

I further certify that on July 19, 2012, a  
copy of the foregoing will be served  
via U.S. Mail on the following counsel of record:

Stanley Lubin  
Lubin & Enoch PC  
349 N 4<sup>th</sup> Ave  
Phoenix, AZ 85003

Leonard Anthony Bennett  
Susan Mary Rotkis  
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